

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT K. DECKER,

Plaintiff,

Case No. 19-cv-11654
Hon. Matthew F. Leitman

v.

LILITA INFANTE, *et al.*,

Defendants.

ORDER (1) ACKNOWLEDGING DEFENDANTS' OBJECTIONS (ECF No. 95) TO REPORT AND RECOMMENDATION (ECF No. 93), (2) ADOPTING RECOMMENDED DISPOSITION OF REPORT AND RECOMMENDATION, (3) TERMINATING AS MOOT DEFENDANTS' MOTIONS TO DISMISS (ECF No. 59, 84), (4) TERMINATING AS MOOT PLAINTIFF'S MOTION TO VOLUNTARILY DISMISS (ECF No. 63), AND (5) GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR LEAVE TO FILE A THIRD AMENDED COMPLAINT (ECF No. 64)

In this action, Plaintiff Robert K. Decker brings claims against the Defendants arising out of alleged violations of his constitutional rights. (*See* Am. Compl., ECF No. 15.) There are now several motions pending before the Court. Defendants have moved to dismiss Decker's claims (*see* Motions to Dismiss, ECF Nos. 59, 84) and Decker has moved (1) to voluntarily dismiss some of his claims and (2) for leave to file a Third Amended Complaint (*see* Decker Motions, ECF Nos. 63, 64). All of the motions were referred to the assigned Magistrate Judge. (*See* Order, ECF No. 45.)

On August 11, 2022, the Magistrate Judge issued a Report and Recommendation in which he reviewed all of the pending motions (the “R&R”). (*See* R&R, ECF No. 93.) The Magistrate Judge first recommended that the Court grant in part and deny in part Decker’s motion to file a Third Amended Complaint. (*See id.*) More specifically, the Magistrate Judge recommended that the Court (1) deny leave to amend to the extent that Decker sought to add and/or amend claims related to alleged property damage and theft but (2) grant leave to amend to the extent that Decker sought to add and/or amend claims related to the alleged warrantless searches of his home. (*See id.*, PageID.614-620.) The Magistrate Judge then recommended, in light of his conclusion that Decker should be permitted to file a Third Amended Complaint, that the Court terminate Defendants’ motions to dismiss and Decker’s motion to dismiss as moot. (*See id.*, PageID.620-622.) Finally, at the conclusion of the R&R, the Magistrate Judge informed the parties that if they wanted to file objections to his recommendations, they needed to file specific objections, in writing, with the Court within fourteen days. (*See id.*, PageID.622-623.)

On August 25, 2022, Defendants filed objections to the R&R.¹ (*See* Objections, ECF No. 95.) In the objections, Defendants argue that the Magistrate Judge should not have granted Decker leave to file an amended complaint with respect to his warrantless search claims because those claims are futile. (*See id.*) However, Defendants indicated that they did not seek a ruling on that objection now. Instead, they told the Court that they would “reserve their right to respond to [Decker’s] third amended complaint after it is filed, including the possibility of filing a second motion to dismiss, as appropriate under the Federal Rules of Civil Procedure.” (*Id.*, PageID.629.) The Court recognizes this reservation of rights, and Defendants shall be permitted to file a motion to dismiss Decker’s Third Amended Complaint if they believe that such a motion is appropriate after reviewing that pleading.

Accordingly, **IT IS HEREBY ORDERED** as follows:

- The recommended disposition of the Magistrate Judge’s R&R (ECF No. 93) is **ADOPTED**;

¹ Decker has not filed any objections to the R&R. The failure to object to an R&R releases the Court from its duty to independently review the matter. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985). In addition, the failure to file objections to an R&R waives any further right to appeal. *See Howard v. Sec’y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *Smith v. Detroit Fed’n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987).

- Decker's motion to file a Third Amended Complaint (ECF No. 64) is **GRANTED IN PART AND DENIED IN PART** as set forth in the R&R. By no later than **October 31, 2022**, Decker shall file a Third Amended Complaint that complies with the Magistrate Judge's instructions in the R&R. Defendants shall answer or otherwise respond to the Third Amended Complaint in the time period described in the Federal Rules of Civil Procedure;
- Decker's motion to voluntarily dismiss (ECF No. 63) is **TERMINATED AS MOOT**; and
- Defendants' motions to dismiss (ECF Nos. 59, 84) are **TERMINATED AS MOOT**.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: September 1, 2022

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on September 1, 2022, by electronic means and/or ordinary mail.

s/Holly A. Ryan
Case Manager
(313) 234-5126